

IN THE UNITED STATES PATENT

AND TRADEMARK OFFICE

Application of : Filepp et al.

Group Art Unit : 2153

Serial No. : 08/933,500

Examiner : Dinh, Dung C

Filed : September 18, 1997

For : INTERACTIVE COMPUTER NETWORK AND  
METHOD OF OPERATION

**DECLARATION UNDER 37 C.F.R. §**

1.132

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Sir:

I, Theodore Papes, declare that:

1. I make this declaration in support of allowance of the above-identified application.
2. I was President and Chief Executive Officer of Trintex, later renamed Prodigy Services Company, between 1984 and 1992.
3. I make this Declaration to state my knowledge of the circumstances surrounding the testing and development of the Prodigy Service in 1987 and 1988.
4. During 1987 and 1988, Trintex, under my direction, was involved in acquiring new users to test and aid in development of the Prodigy Service.
5. Hartford, Atlanta and San Francisco were always considered test cities during the testing and development of the Prodigy Service in 1987 and 1988.
6. The Founding and Charter Member Programs involved the acquisition of additional users in the previously established Hartford, San Francisco and

Atlanta test cities for the purpose of testing the service over a larger user base.

7. At the time of the Founding and Charter Programs, during the Spring and Summer of 1988, it was felt that the Prodigy Service was still in system test, that a significant expansion of the user base was needed to fully test the system functionality and acceptability, and that this testing could identify potential points of failures in the system.

8. The Founding and Charter Members were given special incentives as inducements for their hoped-for toleration of the anticipated system failures.

9. The names "Founding" and "Charter" were themselves chosen to convey to the users that they were being asked to participate in testing and development of something entirely new and different.

10. The Founding and Charter Member Programs were primarily directed to testing and development of the Prodigy Service and were not principally directed to commercial marketing of the Service.

11. The first effort to commercially market the Prodigy Service was the expansion of the Service to several California cities during the Fall of 1988.

12. I made a videotape, attached hereto, in early 1989 for viewing by Prodigy employees which was an effort to communicate the progress that had been made toward establishing the viability of the Prodigy Service.

13. In the aforementioned videotape, I referred to the Founding Member Program as "fine tuning" of the Service before it was made widely available.

14. Notwithstanding my statement in the aforementioned videotape regarding fine tuning, I was aware at the time of the Founding and Charter Programs,

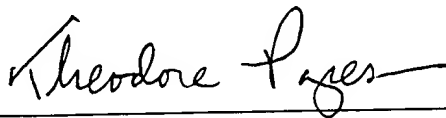
during the Spring and Summer of 1988, that many technical issues remained to be resolved before the Prodigy Service would be ready for marketing as a commercial service.

15. The Prodigy Service as it existed prior to August 1988 had been distributed to a very small group of test users but had not yet been demonstrated to be capable of servicing a large number of users.

16. With the advent of the Founding and Charter Programs, it was recognized that there was no practical way to maintain the same level of confidentiality and control as had been achieved in prior testing and still expand the user base to a size sufficient to test the system susceptibility to failure under high demand conditions.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: April 3, 2003

  
Theodore Papes